

**Service Transportation Company and Inland Terminal Workers, Local #1730, International Longshoremen's Association, AFL-CIO. Case 22-CA-9855**

May 13, 1981

**DECISION AND ORDER**

Upon a charge filed on March 21, 1980, by Inland Terminal Workers, Local #1730, International Longshoremen's Association, AFL-CIO, herein called the Union, and duly served on Service Transportation Company, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 22, issued a complaint on July 28, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

Thereafter, Respondent and the Union entered into a settlement agreement which was approved by the Regional Director on September 8, 1980. On November 6, 1980, the Regional Director issued an "Order Withdrawing Approval of and Setting Aside Settlement Agreement" because Respondent had failed to comply with the terms of said settlement agreement. On the same date, the General Counsel, by the Regional Director for Region 22, issued a complaint again alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. A copy of the complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Respondent did not file an answer.

On February 12, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, based upon Respondent's failure to file an answer to the complaint as required by Sections 102.20 and 102.21 of the Board's Rules and Regulations, Series 8, as amended. Subsequently, on February 23, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent failed to file a response to the Notice To Show Cause.

Upon the entire record in this proceeding, the Board makes the following:

**Ruling on the Motion for Summary Judgment**

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent specifically states that, unless an answer to the complaint is filed by Respondent within 10 days from the service thereof, "all of the allegations contained in the Complaint shall be deemed to be admitted to be true and may be so found by the Board."

To date, neither an answer to the complaint nor a response to the Notice To Show Cause has been filed by Respondent. No good cause to the contrary having been shown, the allegations of the complaint herein are deemed to be admitted and are so found by the Board. Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

**FINDINGS OF FACT**

**I. THE BUSINESS OF RESPONDENT**

Respondent, a New Jersey corporation, at all times material herein has maintained its principal office and place of business at 250 State Highway No. 3, Secaucus, New Jersey, where it is engaged in providing interstate transportation of freight and commodities. During the calendar year ending December 31, 1979, Respondent, in the course and conduct of its business, derived gross revenues in excess of \$50,000 from the transportation of freight and commodities from the State of New Jersey directly to points outside the State of New Jersey.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and

that it will effectuate the policies of the Act to assert jurisdiction herein.

## II. THE LABOR ORGANIZATION INVOLVED

Inland Terminal Workers, Local #1730, International Longshoremen's Association, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

## III. THE UNFAIR LABOR PRACTICES

The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All checkers, platform workers and hi-lo operators employed by Respondent at its Secaucus facility, excluding all professional employees, guards and supervisors as defined in the Act.

At all times material herein, the Union has been and is now the exclusive representative of employees in the above-described unit. At all times herein and continuing to date, Respondent and the Union have been parties to a collective-bargaining agreement covering the above-described unit employees, which agreement provides, *inter alia*, that Respondent shall give the Union written notification of an intention to change its method of operation, including any planned closing of its Secaucus terminal, at least 30 days prior to any such planned action.

On or about March 4, 1980, Respondent unilaterally decided to cease business permanently at its Secaucus terminal. On or about March 14, 1980, Respondent did cease its business operations at its Secaucus terminal and terminated all employees in the aforementioned unit. Respondent failed to notify the Union of its decision to cease operations permanently as required by its contract. On or about March 10, 1980, the Union requested that Respondent meet and bargain with it concerning Respondent's decision and the effect of such decision upon employees in the unit. Nevertheless, at no time prior to March 14, 1980, did Respondent meet, and bargain as requested, with the Union.

Accordingly, we find that by the aforesaid conduct Respondent has since on or about March 4, 1980, refused to bargain with the Union concerning the effects on unit employees of its decision to close its Secaucus terminal. By such action, Respondent has engaged in and is in engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

## IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its oper-

ations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

We have found that Respondent failed to offer the Union an opportunity to bargain about the effects of the closing of its Secaucus facility on bargaining unit employees. Under these circumstances, a bargaining order alone is an inadequate remedy since Respondent's unlawful failure to bargain at the time of the shutdown denied the employees an opportunity to bargain through their collective-bargaining representative at a time when Respondent was still in need of their services and when there would have been some measure of balanced bargaining power. Therefore, in order to effectuate the policies of the Act and to assure meaningful bargaining, we shall accompany our order to bargain over the effects of the cessation of business with a limited backpay requirement fashioned to make whole the employees for losses suffered as a result of Respondent's failure to bargain, as well as to reestablish a bargaining situation in which the parties' bargaining position is not entirely devoid of economic consequences to Respondent.<sup>1</sup>

Accordingly, we shall order Respondent to bargain with the Union, upon request, about the effects on bargaining unit employees of the closing of Respondent's Secaucus facility, and to pay those employees amounts at the rates of their normal wages when last in Respondent's employ, from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing on unit employees; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of issuance of this Decision, or to commence negotiations within 5 days of Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith. In no event shall the sum paid to any of employees

<sup>1</sup> See *Merryweather Optical Company*, 240 NLRB 1213 (1979); *Transmarine Navigation Corporation and its Subsidiary, International Terminals, Inc.*, 170 NLRB 389 (1968).

exceed the amount the employee would have earned as wages from March 14, 1980, the date on which Respondent closed its Secaucus facility, to the time he secured equivalent employment elsewhere; provided, however, that in no event shall the sum be less than the employee would have earned for a 2-week period at the rates of his normal wages when last in Respondent's employ.<sup>2</sup> Interest on all sums shall be paid in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).<sup>3</sup>

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

#### CONCLUSIONS OF LAW

1. Service Transportation Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Inland Terminal Workers, Local #1730, International Longshoremen's Association, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All checkers, platform workers and hi-lo operators employed by Respondent at its Secaucus facility, excluding all professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material herein, the above-named labor organization has been and now is exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing to bargain with the Union concerning the effects of closing its Secaucus facility on its employees, Respondent violated Section 8(a)(5) and (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Service Transportation Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to bargain with Inland Terminal Workers, Local #1730, International

Longshoremen's Association, AFL-CIO, concerning the effects on its employees of the termination of operations at its Secaucus facility.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Make whole its employees by paying those employees who were terminated on March 14, 1980, when Respondent closed down its Secaucus facility, normal wages plus interest in the manner set forth in the remedy section of this Decision.

(b) Upon request, bargain collectively with Inland Terminal Workers, Local #1730, International Longshoremen's Association, AFL-CIO, with respect to the effect on its employees of the termination of operations of its Secaucus facility and reduce to writing any agreement reached as a result of such bargaining. The bargaining unit is:

All checkers, platform workers and hi-lo operators employed by Respondent at its Secaucus facility, excluding all professional employees, guards and supervisors as defined in the Act.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Mail an exact copy of the attached notice marked "Appendix"<sup>4</sup> to Inland Terminal Workers, Local #1730, International Longshoremen's Association, AFL-CIO, and to all the employees who were employed at its former place of business at 250 State Highway No. 3, Secaucus, New Jersey, on March 14, 1980. Copies of said notice, on forms provided by the Regional Director for Region 22, after being duly signed by Respondent's authorized representative, shall be mailed immediately upon receipt thereof, as hereinabove described.

(e) Notify the Regional Director for Region 22, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

<sup>2</sup> See *Transmarine Navigation Corporation*, *supra*.

<sup>3</sup> See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962). In accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

<sup>4</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

WE WILL NOT fail and refuse to bargain with Inland Terminal Workers, Local 1730, International Longshoremen's Association, AFL-CIO, with respect to the effects on our employees of the decision to close our Secaucus terminal.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them under Section 7 of the Act.

We will make employees whole by paying those employees who were terminated on

March 14, 1980, when we closed our Secaucus facility, normal wages for a period specified by the National Labor Relations Board, plus interest.

WE WILL, upon request, bargain collectively with Inland Terminal Workers, Local 1730, International Longshoremen's Association, AFL-CIO, with respect to the effects on our employees of our decision to close our Secaucus facility and reduce to writing any agreement reached as a result of such bargaining. The bargaining unit is:

All checkers, platform workers and hi-lo operators employed at our Secaucus facility, excluding all professional employees, guards and supervisors as defined in the Act.

SERVICE TRANSPORTATION COMPANY